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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/694,706	10/28/2003	Chi Fai Ho	110 Cont3	5206

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EXAMINER	
UTAMA, ROBERT J	

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3714	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/694,706	HO ET AL.	
	Examiner	Art Unit	
	Robert J. Utama	3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *15 March 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *39-47,56,57 and 59-70* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *39-47, 56-57 and 59-70* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Status of Claim

1. In response to the amendment filed on 03/15/2007. The status of the claims are as follow: claims 1-38 and 48 have been cancelled, and claims 39-47, 56-57 and 59-70 are still pending. Claims 52-55 and 58 are withdrawn.

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 03/15/2007 has been entered.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 44-47, 49-51, 64-70 rejected on the ground of nonstatutory double patenting over claim 1-8, 19-23, 24, 45-47 of U. S. Patent No. 5,944,530 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: In the patent 5,944,530 the applicant had claim the following features: [presentation of study materials to a student, monitoring student behavior based on the speed of the subject's input and presenting/monitoring the subject in a multi-window environment and determining if the student had lost concentration] as well as the features of: [presentation of study materials to a student, monitoring student behavior, changing the presentation material in order to (re)gain a subject's concentration]. The patent 5,944,530 also discloses an embodiment where the features of: [presentation of study materials to a student, monitoring student behavior based on the speed of the subject's input and presenting/monitoring the subject in a multi-window environment and determining if the student had lost concentration and changing the presentation material in order to (re)gain a subject's concentration] are presented in a single embodiment (see Ho '530 col.1:52-col.2:19). In the current application, the applicant is seeking to claim the following features: [presentation of study materials to a student, monitoring student behavior based on the speed of the subject's input and presenting/monitoring the subject in a multi-window environment and determining if the student had lost concentration and changing the presentation material in order to (re)gain a subject's concentration]. Hence, the examiner concluded that the double patenting rejection is warranted.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 39-40, 43, 59-60 and 62 are rejected under 35 U.S.C. 102(e) as being anticipated by Cook et al US 5,727,950 (hereinafter Cook '950).

Claim 39-40: Cook '950 teaches of instructional system that presents study material (e.g.: homework) via a computer (see Cook '950 Abstract). Cook '950 teaches of measuring various factor such as: time between user input (latency) to adjust study material presentation to a specific student (Cook '950 col. 49:25-41). In Cook '950 latency refers to time measurement generated when there is no input even of an expected input type (**Claim 40**) [See Cook '950 table 2c at the top of Col. 52]. The type of input devices used in Cook '950 consist of: keyboard, mouse and other pointing device (Cook '950 col20:27-30) [**Claim 39**] The latency information are used in combination with moving average of the previous known information and then used to make a determination of the state of the user (see Cook '950 col. 63:10-25). Once the user's state has been determined the system will adjust the presentation material (see Cook '950 49:36-41). Cook '950 provided a teaching where the study materials have a level of difficulty or content and setting a time period based on the level of difficulty or content of the study material (see Cook '950 Col. 33:45-47 and col. 13:39-49).

Claim 43: Cook '950 explains that the adjusting the study material is determined by a user's previous interaction (via the use of moving average, error rates and etc) [see Cook '950 col.49:25-30].

Claim 59: Cook '950 teaches of instructional system that presents study materials (e.g: homework) via a computer (see Cook '950 Abstract). Cook '950 teaches of measuring various fact such as: time between user input (latency) to adjust study material presentation to a specific student (Cook '950 col. 49:25-41). The type of input devices used in Cook '950 consists of: keyboard, mouse and other pointing device (Cook '950 col20: 27-30). The latency information are used in combination with a moving average of the previous latency information and then used to make a determination of the state of a user (see Cook '950 Col. 63:10-25). Once the user's state has been determined the system will adjust the presentation material (see Cook '950 col. 49:36-41). Cook '950 provided a teaching where the study materials have a level of difficulty or content and setting a time period based on the level of difficulty or content of the study material (see Cook '950 Col. 33:45-47 and col. 13:39-49).

Claim 60: Cook '950 explains that adjustting the study material is determined by a user previous interaction (the use of moving average, error rates and/or use of hints) [see Cook '950 col.49: 25-30], which are all independent of the content of the response.

Claim 62: Cook '950 teaches that several performance metrics (such as: time latency) can be used to adjust the time pacing of the presentation (Cook '950 col. 63:7-25).

7. Claims 41-42 are rejected under 35 U.S.C 103(a) as being unpatentable over Cook et al US 5,727,950 (hereinafter Cook '950), further in view of Gevins et al US 5,724,987 (hereinafter Gevins '987).

Claim 41 and 42: Cook '950 fails to provide a teaching where adjusting the study materials comprises of adjusting the audio (**claim 41**) and visual effect (**claim 42**). Gervins '987 teaches of adjusting the distribution of teaching via the auditory or visual modalities (Gervins '987 Col. 6:11-17). Therefore, it would have been obvious to further modify Cook '950 with the teaching of adapting the distribution between auditory and visual modalities of the presentation of the teaching material. One of ordinary skilled in the art would have been motivated to make this

combination since it would maintain the user at an optimal level of attention and comprehension (Gevins '987 Col. 4:25-30).

8. Claim 61 and 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cook et al US 5,727,950 (hereinafter Cook '950) and further in view of Collins et al US 5,437,553 (hereinafter Collins '553).

Claim 61: Cook '950 fails to provide a teaching where adjusting the study material comprises of presenting a question to the user. Collins '553 teaches of adjusting a study material by asking the user whether or not he wants to continue with the learning material. If the user answer with "yes" he will be shown a new learning material; on the other hand, if the user answer with "no" he will be shown a game in order to reclaim his attention span (see Collins '553 Col. 6:10-36 and FIG 4. item 144). Therefore, it would have been obvious at the time of the invention to modify Cook '950 with the teaching of presenting an option to proceed with another learning material or a game. One of ordinary skilled in the art would have been motivated to make this combination since it would allow the student to have the option to alleviate boredom if needed (see Collins '553 Col.6:24-32).

Claim 63: Cook '950 fails to provide a teaching on adjusting the study material by switching to different set of study material. Collins '553 teaches of providing the user with the options of getting a new set of study material (Col. 6:30-35). Therefore, it would have been obvious at the time of the invention to modify Cook '950 with the teaching of presenting a new study material in a learning environment. One of the ordinary skilled in the art would have been motivated to make this combination since it would help alleviate boredom during the use of a learning system (see Collins '553 Col. 6:24-32).

Response to Arguments

9. In response to applicant's argument and amendment with regards to the rejection under 35 U.S.C 101 on claim 39-47, 49-51, 57-56 and 59-63. Applicant's amendments are considered effective and such rejections are hereby been withdrawn.

10. With respect to applicant's argument on claim 39-40, 43, 59-63 on the grounds that the reference Cook '950 fails to provide a teaching for the limitation of "setting a time period based on the level of difficulty of the study materials" or "setting a time period based on the content of the difficulty material". The examiner respectfully disagrees. The examiner has included new citations from the Cook '950 reference that explicitly recites the teaching of the feature of "setting a time period based on the level of difficulty or content of the study material" (see see Cook '950 Col. 33:45-47, col. 13:39-49 and expected time to completion). Hence, the examiner considers the applicant's argument and amendment to be insufficient in order to overcome the teaching of the prior art.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert J. Utama whose telephone number is (571) 272-1676. The examiner can normally be reached on M-F 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezutto can be reached on (571)272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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